# Missouri Small Business Regulatory Fairness Board Public Hearing – May 1, 2006 Room 500 Harry S Truman State Office Building Jefferson City, Missouri

## **DRAFT Minutes**

<u>Board members in attendance</u>: Scott George, Randy Angst, Micheal Ocello, Maria G. Taxman, Daryl Hylton, Sharon Gulick

<u>Testifying</u>: Jim Miluski, OA/PMM; Doyle Childers, DNR; Becky Heinrich, Jefferson City; Thomas A. Kauffman, Jefferson City; Suzanne Joyce, St. Louis; Richard Johnston, Lebanon; Bill Crull, Holts Summit

<u>Guests</u>: Jim Macy, DNR; Dan Schuette; DNR; Scott Totten, DNR; Doug Gaston, MO State Treasurer's Office; Carol Fischer, Secretary of State; Barbara McDougal, Secretary of State; Loree Eynard, Jefferson City; Wendell Bailey, US Small Business Administration, Kansas City; J.W. Edwards, US Small Business Administration, Columbia;

Chairman George made opening remarks by welcoming everyone to a historic day for small business because they have the opportunity to have their voices heard about the sea of regulations that they struggle with.

Chairman George thanked Rep. Brian Baker, former Senator, and other supporters of the Small Business Regulatory Bill as it went through the legislature in 2004. He also thanked Senator Gary Nodler, Governor Matt Blunt and everyone else involved in the 2005 legislation that strengthened this law and resulted in the Board becoming active. He thanked all the small businesses and the combined efforts of everyone that supported the law.

Scott George continued that the goal for the SBRFB is to affect change in the way state regulations are promulgated and the way state regulations are created and enforced in Missouri. He further stated that the Board will know when it has accomplished it's goal when state agencies work to include small businesses when developing new regulations so that they are workable, achieve their goals and minimize their impact on small businesses; when rules are enforced in a manner that help the small business to comply with regulations rather than through coercion or embarrassment; and when existing rules are carefully reviewed for their impact on small business, updated when appropriate, and discarded when they no longer serve an interest.

Comments from the small businesses in hearings like today are critical to the SBRFB's success to help bring about much needed improvement. Testimony helps focus attention in the areas where improvement is needed. The SBRFB is charged with reporting to the Governor and the State Legislature every year. The state agencies will be graded on their approach to small business regulatory fairness, these testimonies will factor heavily in that yearly report.

Everyone made introductions and gave a little personal history

Scott George explained how the hearing would proceed. Two agencies were asked to testify on their approach to small business regulatory fairness and what they are doing to improve. The Office of Administration (OA) and Department of Natural Resources (DNR) will have fifteen minutes to speak and were asked to remain through the hearing so that when the small businesses testify; there will be an opportunity to turn to OA and DNR to ask questions. There are four scheduled for public testimony today and they have five minutes each. The Board will ask questions after each testimony.

Anyone wanting to testify today can sign up with Cathy and they will have three minutes to testify, and followed by any questions from the Board.

The Department of Natural Resources represented by Director and former Senator Doyle Childers testified:

Doyle Childers thanked Scott and said that when he was appointed, he was asked by the Governor how he could help make DNR more effective and carry out the different proposals during his campaign. Doyle sat down with forty to fifty people to work through the issues. DNR first looked at their permitting and saw that thirty-five to forty permits are issued yearly which are requirements of either state or federal law. Seventy percent of those could be put on the internet through an automated permitting system because many of these forms are more of a registration. Right now there are some e-forms on line, and DNR will put as many of those on the internet as possible. Eventually, as the state works out how to do electronic payments, DNR will make sure they are compatible to offer payments electronically.

Doyle realized that their operations manuals have information in them that are difficult to understand. Having a background in science, Doyle could identify with the fact that the average person would also find them difficult to understand. DNR is vetting their manuals through ordinary people so these manuals are easy to understand and several of them are currently available on the web.

DNR also looked at availability of their services and realized that their technical people are spending from two to five hours on the road. They have put more people out in the regions and satellite offices. They are mapping the state to concentrate where the greatest needs are so they can utilize their staff more efficiently. They have opened Maryville, Rolla (covering the Fort Leonard Wood, Lake of the Ozarks and I-44 corridor) and the Boothhill are already in place. They are also getting ready to open the West Plains, Willow Springs, Cabool area. DNR is also looking at the Hannibal area and a two to three other areas where DNR can work from at no cost since they cannot afford to pay for facilities.

An ombudsman program has been put in place in each region, which is very successful. The ombudsman is out traveling in the field and covering these areas instead of waiting for calls. These ombudsmen have made over one-thousand contacts with small businesses, local governments, counties and cities. When calls come in they go to the chief ombudsman, Scott, who is located three steps from Doyle's office, or the regional directors. If it is a simple enough problem the regional directors can handle them, if it a more complex problem, Scott takes care of it. If it is a major problem or something seen in several different area, it is directed to Doyle and it is taken up

to executive staff meeting and it is discussed there. It seems to be a very successful way of solving most problems by cutting through the red tape.

Another area that has been looked at is compliance assistance visits, or initial assistance visits. Doyle said he could find little fault on how they are doing permits as far as completeness. The problem was they were not sending anyone out to check and see if the work was being accomplished that was in the permits. The e-form permitting has allowed DNR to take their personnel and put them on the more complex permitting issues to speed that up. They are also sending out the staff that would otherwise be occupied with writing permits to go out and be the initial point of contact. These staff members are able to go through the permitting and operations instead of doing inspections. This is a voluntary service provided upon request. DNR did a trial run of one hundred eighty-eight contacts in November and December and found that forty-four percent of those contacts were out of compliance or in some violation of environmental regulations. By using this process those contacts were able to be brought into compliance and now understand what the needs are that they needed to follow up on and there were no notices of violation.

DNR feels this is a much better process of protecting the environment through a permitting method rather than having to go back and deal with penalties and the cost of business clean ups. DNR will be doing a great deal of more than that in the future. DNR did some checking and found that ninety percent of the contacts they dealt with were positive about the new process and felt it was a big improvement. There was only one entity that was negative about the compliance assistance visit and they are trying to work with them. That covers most of the general things. All of DNR's authority is from the federal government through EPA delegation. Clean water and clean air are all EPA delegations. EPA retains the right to look over DNR's shoulder and may send inspectors behind them to make sure they are doing things right.

# Questions:

Has there been an associated cost reduction to the individual businesses due to the e-permitting?

**Doyle:** The issue is if cost is reduced DNR will not have the personnel to go out and do the compliance assistance. Obviously it is cheaper to do it that way, however those same people are being used for the compliance assistance. Next year there may be some adjustments that they can make to the budget, however if the money was just taken away DNR would not have the people to do the work.

There was a continued discussion.

Office of Administration Purchasing, Jim Muluski with the Division of Purchasing & Material Management Director testified:

They do not do a lot of rules and regulations, they have a standard set that are modified infrequently. Most of their operations are to insure the fair and equitable treatment of all parties; to establish standardized specification, not to limit competition. They have enabling authority chapter 34 of RSMo which gives them the capability to create solicitations with minimum requirements. Anything over twenty-five thousand dollars must be advertised, by newspaper and electronically and sealed. The commissioner has the ability to determine the amount of bond or deposit. They also operate under several executive orders (such as MBE/WBE, U.S. made preference, and

more). Everything they do is on their web site do to the cost of advertising. There is a vendor registration on-line, bid notices, bid search feature, etc.

Their intent on state-wide contracts is to have the lowest and best price and best service for all of their products. There are roughly one-hundred and forty-five contracts listed on the web. Jim issued a memo regarding the MRO contract that if an agency needs a product before it can be delivered by the state-wide contract then they can go out and get it locally, it is also written in the contract. In ninety-five percent of their bids there is not a bonding requirement. The IT consulting contract, large mental health or social services contracts have bonding requirements to insure performance.

#### Questions:

Explain how the bonding requirement is determined: If they have a bid bond at all it is roughly ten percent of the value of how much the contract is going to cost. They come up with what they deem is appropriate. That is a specification that can accept a protest. A bidder can document a complaint on any specification or requirement that they have saying it is restrictive or not conducive to their bidding. This is a pre-solicitation protest period available to everyone which much be submitted ten days before the bidding.

The only small business program available through OA is the Minority and women-owned business enterprise program (MBE/WBE). This is subjectively evaluated as a sub contractor. Ten percent minority and five percent women owned businesses are the requirement. This does not apply to all small businesses. There are no set asides for minority or women-owned businesses. The subcontracting percentages are included in the point evaluations for bidders.

# **Public Testimony:**

Tom Kauffman, Jefferson City, a small business contractor who does a lot of government work. Mr. Kauffman testified about a bid for the Missouri National Guard he saw in the newspaper. He was interested and went to the lke Skelton Training Center to see the job. He decided to bid on the job, went through the process of getting prices and sending the information to his bonding company stating that the owner of the contract was the Missouri National Guard Training Center.

Mr. Kauffman was the lowest bid of six bidders, and he said he waited for a long period of time to hear from Design and Construction. He made several calls to Design and Construction and was not able to get any answers, but heard through the grapevine that his bid was thrown out. He received a letter stating that his bid was thrown out because he didn't list the Division of Design and Construction as the owner instead of the National Guard. The letter stated that he was non responsive to the bid requirement spelled out in Article 5, paragraph C.

There were a few questions from the Board. Mr. Kauffman then took a few more minutes to discuss the ten day notification form he has to fill out with DNR for demolition work. You have to wait ten days before beginning a job. He ended up getting fined \$2,000.00, but worked it out where he did not have to pay. He said there are just so many regulations.

Bill Crull, Holts Summit has a small business doing construction work. Mr. Crull testified on three items. First he said the MBE/WBE program has been revised and turned around where there is reverse discrimination. There is a point system for contractors. He bid on a job in January for a roof replacement at Algoa Correctional Center. His bid was thrown out because they filled out a waiver and did not meet the 4% goal. He says the participation is not out there in this area. Mr. Crull did not have a chance to discuss the decision, so he contacted his state representative. Secondly Mr. Crull testified about the fact that he is involved in litigation now with the general contractor his company was used as a sub contractor for and has not been paid. The last testimony was about resale tax issue. Questions and comments followed.

Richard Johnson, Lebanon owner of a twenty-two acre campground with his wife. Mr. Johnson said the Dept. of Natural Resources has threatened them for being in violation of clean water laws. He said they were never notified of any changes in the law but was warned his business would be in violation and needed to hire an engineer and take care of it. He hired engineers and did significant improvements to his lagoon. He said five years later, he is now in violation on the clean water laws with DNR. He said DNR has proposed a local sewer system for those using lagoons, and that the businesses need to form the sewer system. Mr. Johnson said he would be willing to work with DNR, but it is not his job to find the money, or to form the sewer system. The state park in Lebanon also uses a lagoon system.

Questions and comments continued about the sewer system. There is discussion about forming a sewer district that is now in committee.

Scott George testified regarding unemployment compensation with the Missouri Department of Labor, Division of Employment Security. Scott said that every time he would go to an unemployment compensation hearing, he would lose. He said when he stopped going, he started to win, however this is more difficult to do now because the division went to telephone hearings. Scott said that the unemployment compensation system is broke because the money is chronically given away. He said that the Division of Employment Security needs to take into account the size of small businesses when they are going through the appeals process.

Wendell Bailey made a brief introduction to Susan Joyce, small business owner of Tech Guard Security and small business of the year from St. Louis. Ms. Joyce thanked the Board and testified regarding cyber security. She discussed security and mentioned the national data breach law in the state of California, and said other states are adopting the law. Ms. Joyce said Missouri privacy laws & national security needs to be taken seriously. She said it is a compliance law that can be costly to all of us.

#### **Questions & Comments**

Becky Heimerick, Schrieffer Office Equipment in Jefferson City, testified about the office supply contract with the State of Missouri. The bid was given to a national supply chain. Ms. Heimerick said that several state departments have mandated the contract which dictates where to buy all their office supplies. She said when it is mandated there is no competition in the marketplace. Ms. Heimerick said that she would like for the state agencies to look at everyone and be able to make

their selection based on what is in the best interest of the state. She said that competition is what makes everything fair, and that competition should be allowed back in.

### Questions & Comments

Jim Muluski said that the office supply award is based on a preferred vendor, that it is not mandated through the Office of Administration. Department of Corrections & the Department of Economic Development are two of the agencies that have a mandate. Sharon Gulick confirmed that the Department of Economic Development is mandated. The discussion about awarding contracts continued.

Wendell Bailey made the comment that the SBRFB may be the most valuable board in the State of Missouri. He said there is a panel at the Federal level doing the same thing, except they are trying to get in front of the federal regulations. Mr. Bailey said he will be our link to the federal advocates.

Carol Fischer discussed the Secretary of State's web site, and about the rules that are being filed in the Missouri Register. She said she will be happy to come back and do a formal presentation on rulemaking at a later date. Two weeks ago they rolled out a small business advocacy resource on their web site. She said she will be happy to provide a link from the SOS web site to the SBRFB web site.

Final comments: Scott George said the kind of testimonies that were heard today are the type of comments the Board wants to hear. He said by the nature of the comments heard today, that there are going to be changes to make it better and fairer for small business. He thanked everyone for coming.